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IN THE

Supreme Court of the United States

OCTOBER TERM 1942

No. 203

CLAIMANTS FOR BENEFITS UNDER THE MICHIGAN UNEMPLOYMENT COMPENSATION ACT,
Petitioners,
vs.
CHRYSLER CORPORATION, a Delaware Corporation,
and
THE APPEAL BOARD OF THE MICHIGAN UNEMPLOYMENT COMPENSATION COMMISSION, et al.,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN AND BRIEF IN SUPPORT THEREOF

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States of America:

The petition of claimants for benefits under the Michigan Unemployment Compensation Act respectfully shows:

SUMMARY AND SHORT STATEMENT OF MATTERS INVOLVED

Petitioners numbering approximately twenty-two thousand (22,000) (R. 7, 8) are claimants under the Michigan

Unemployment Compensation Act for Unemployment Compensation Benefits in the amount of approximately Two Million ($2,000,000.00) Dollars. Their claim arises out of their unemployment at the Chrysler Corporation from October 14, 1939 to December 2, 1939. Petitioners are members of the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America affiliated with the Congress of Industrial Organizations.

The Michigan Unemployment Compensation Act (Sections 32-38) provides that claims for benefits shall be allowed or denied by the Michigan Unemployment Compensation Commission and from its decision appeal may be taken by either the claimant or the employer successively to a referee of the Michigan Unemployment Compensation Commission, the Appeal Board of the Michigan Unemployment Compensation Commission, the Circuit Court and finally to the Michigan Supreme Court.

The following constitutes a history of the proceedings:

1. Petitioners' claims were allowed by the redetermination of the Michigan Unemployment Compensation Commission on July 26, 1940 (R. 121).
2. The redetermination of the Commission allowing benefits was affirmed on appeal by the Chrysler Corporation to the referee of the Michigan Unemployment Compensation Commission on October 7, 1940 (R. 140).
3. The decision of the referee allowing benefits was affirmed on appeal by the Chrysler Corporation to the Appeal Board of the Michigan Unemployment Compensation Commission on February 14, 1941 (R. 165-6).
4. On appeal to the court by the Chrysler Corporation, benefits were disallowed by the Circuit Court

for the County of Ingham on October 8, 1941 (R. 178).

5. On appeal by the claimants from the decision of the Circuit Court, the Michigan Supreme Court on April 6, 1942 upheld the decision of the Circuit Court and disallowed benefits.

Section 34 of the Michigan Unemployment Compensation Act provides in part:

> "* * * Provided, That if the final decision of a referee affirms the initial or an amended determination, or the appeal board affirms the final decision of a referee, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's experience record shall be charged with benefits so paid" (See statement of Jurisdiction for citation).

This foregoing provision is known as the "double affirmation" clause. Under its provisions benefits allowed to petitioners by redetermination of the Unemployment Compensation Commission, by the referee of the Unemployment Compensation Commission and by the Appeal Board of the Unemployment Compensation Commission must be paid regardless of the fact that such decisions were subsequently reversed in the courts. Payments so made would be paid out of the general Michigan State Unemployment Compensation fund.

The Chrysler Corporation's financial interest in whether or not petitioners are paid in accordance with the provisions of Section 34 of the Michigan Unemployment Compensation Act is solely that of a general taxpayer to the fund, identical with that of every other employer in the State of Michigan subject to the tax because it is expressly provided in Section 34 that "if such decision

is finally reversed, no employer's experience record shall be charged with benefits so paid."

The Michigan Supreme Court in its decision not only reversed the findings of fact of the Appeal Board of the Unemployment Compensation Commission upon which the allowance of benefits was based, but further held that benefits should not be paid in accordance with the provisions of Section 34 of the Michigan Unemployment Compensation Act, for the reason that such provision would deprive the Chrysler Corporation of property without due process of law in violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

The opinion of the Michigan Supreme Court on this constitutional issue is well summarized in Syllabus 1 of the case in the official Michigan reports:

> 301 Michigan 351:
>
> "1. UNEMPLOYMENT COMPENSATION—PAYMENT OF BENEFITS PENDING APPEAL IN COURT—DUE PROCESS.
>
> "Provision of unemployment compensation act stating that benefits thereunder finally allowed by referee or appeal board should be paid regardless of any appeal from decision of administrative appeal board established under the act if construed as requiring payment of benefits pending judicial determination as to disqualification of claimants for benefits because of direct interest in a labor dispute would render administrative action superior to recognized judicial power and constitute a denial of due process (U. S. Const. am. 14, §1; Act No. 1, §§34, 38, Pub. Acts 1936 (Ex. Sess.), as amended by Act No. 347, Pub. Acts 1937, and Act No. 324, Pub. Acts 1939)."

STATEMENT OF JURISDICTION

Jurisdiction of this Court to review the decision of the Michigan Supreme Court by certiorari is conferred in 8 Federal Code Annotated, Title 28, Section 344(b), the same being Judicial Code Section 237, as amended.

The statute of the State of Michigan held by the Michigan Supreme Court to be violative of the due process clause of the Fourteenth Amendment of the United States Constitution is the Michigan Unemployment Compensation Act (Act No. 1 of the Michigan Public Acts of 1936 extra session (pp. 1-21), as amended by Act No. 347 of the Michigan Public Acts of 1937 (pp. 843-858), and by Act No. 324 of the Michigan Public Acts of 1939 (pp. 797-815). The statute as amended is reported in Michigan Compiled Laws 1929, Vol. 5, Mason's 1940 Cumulative Supplement, § 8485-41 to § 8485-103, pages 887 to 904. That part of Section 34 of said statute which was held unconstitutional is found on page 899 as follows:

> "* * * Provided, That if the final decision of a referee affirms the initial or an amended determination, or the appeal board affirms the final decision of a referee, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's experience record shall be charged with benefits so paid."

The judgment of the Michigan Supreme Court herein sought to be reversed was entered April 6, 1942. This Application for Certiorari is filed ..... Application for certiorari may be made within three months from date of entry of Judgment, 8 Federal Code Annotated, Title 28, Section 350.

QUESTIONS PRESENTED:

The questions presented for review are:

1. Does the payment of Unemployment Compensation benefits to claimant petitioners by the State of Michigan from its Unemployment Compensation Fund in accordance with the provision of Section 34 of the Michigan Unemployment Compensation Act deny the Chrysler Corporation of any PROPERTY within the meaning of the Fourteenth Amendment to the United States Constitution?

2. If Chrysler Corporation as a taxpayer to the Michigan Unemployment Compensation Fund has a property interest within the meaning of the Fourteenth Amendment, does due process of law require judicial determination of the right of claimants to Unemployment Compensation benefits or is the requirement of due process satisfied by proceedings before the administrative tribunals?

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

This Court should review by certiorari the decision of the Michigan Supreme Court for the following reasons:

1. The decision of the Michigan Supreme Court held Section 34 of the Michigan Unemployment Compensation Act, commonly known as the "double affirmation" clause, violative of the Fourteenth Amendment to the United States Constitution. Similar provisions were incorporated in the Unemployment Compensation Acts of thirty-six states. This "double affirmation" clause was taken from the so-called model draft state Unemployment Compensation Act submitted to the states by the Federal Social Security Board at the time when these Acts were

first being considered by the legislature of the various states. Whether such provision is violative of the United States Constitution is a matter of national importance.

2. A similar provision in the California Unemployment Compensation Act has been held valid by the California Supreme Court in the case of *Abelliera v. District Court of California, et al.*, 109 Pac. (2d) 942, 17 Cal. (2d) 280. The Michigan and California decisions are the only decisions yet rendered to our knowledge by a court of final jurisdiction on this subject. Workers in California have been paid unemployment compensation benefits because the California Supreme Court held the double affirmation clause valid while twenty-two thousand (22,000) workers in Michigan with claims approximating Two Million Dollars ($2,000,000.00) have been denied benefits because the Michigan Supreme Court has held a similar double affirmation clause violative of the due process clause of the Fourteenth Amendment of the United States Constitution. This court should resolve the conflict between the Michigan and California State Supreme Courts on this important federal question.

3. The public policy of the Unemployment Compensation Acts is to provide an expeditious method of paying benefits to unemployed workers while they are unemployed without the delay attendant upon extended appeals. If this may not be done constitutionally by administrative tribunals and if it is held that awards must be subject to judicial review as indicated by the Michigan Supreme Court, one of the primary purposes of such legislation may be defeated.

4. The Michigan Supreme Court in holding the "double affirmation" clause invalid has decided a federal question of substance not heretofore decided by this Court.

5. The decision of the Michigan Supreme Court that payment of benefits to claimants from the Unemployment Compensation Fund of the State of Michigan pursuant to Section 34 of the Michigan Unemployment Compensation Act would deny the Chrysler Corporation of property is erroneous.

6. The decision of the Michigan Supreme Court that due process under the Fourteenth Amendment requires judicial process and may not be satisfied by administrative process is erroneous. It is well settled that administrative procedure may constitute due process.

WHEREFORE petitioners respectfully pray that this Court issue a Writ of Certiorari directed to the Supreme Court of the State of Michigan to the end that the judgment of the Supreme Court of Michigan may be reviewed and reversed by this Honorable Court.

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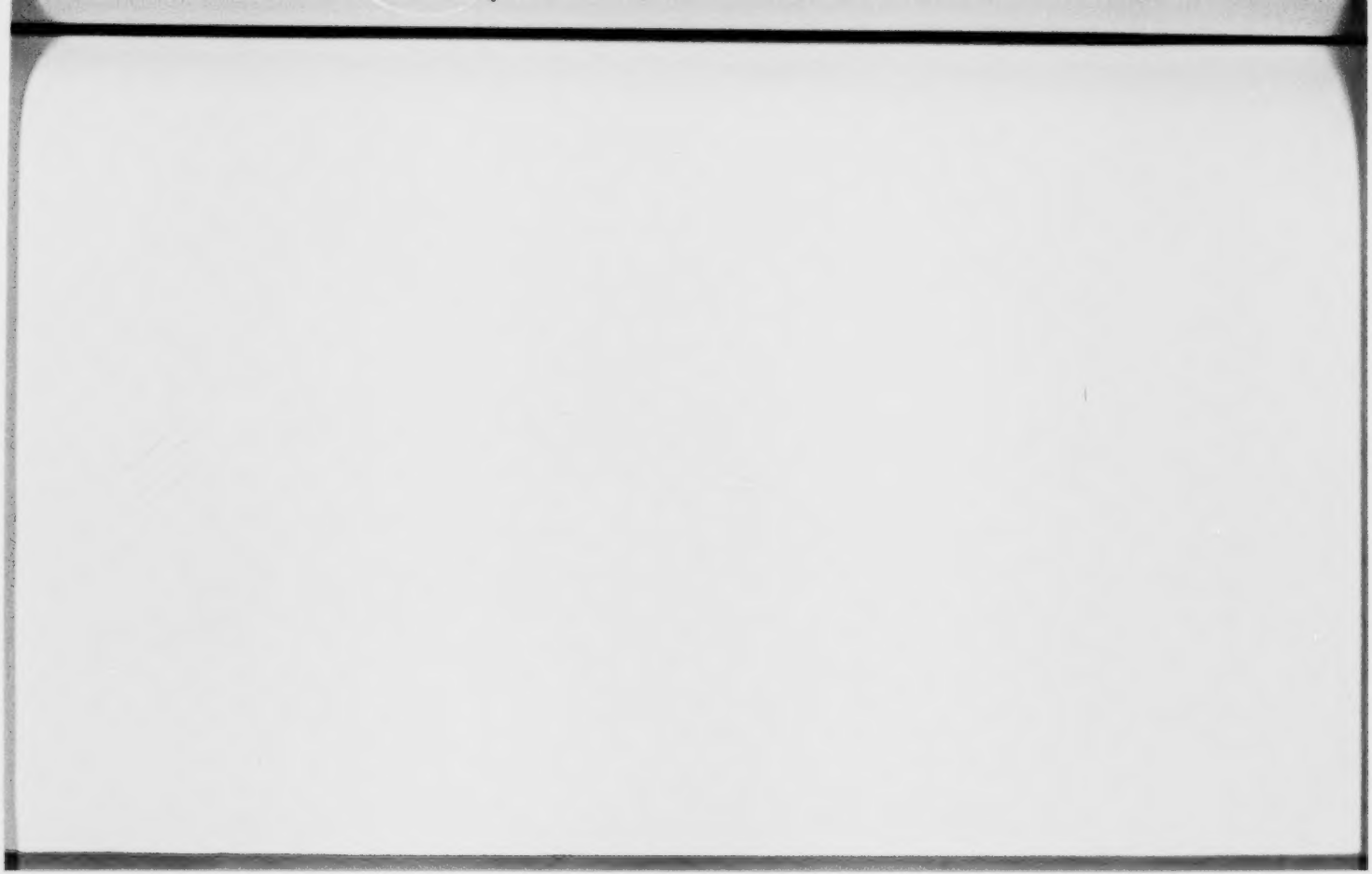

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BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

I.

OPINION OF THE MICHIGAN SUPREME COURT

The Opinion of the Michigan Supreme Court in the above cause is reported under the style of *Chrysler Corporation v. Unemployment Compensation Commission* in the following official reports:

301 Mich. 351.
3 N. W., 2d. 302.

II.

STATEMENT OF JURISDICTION

This is set forth in Petition for Certiorari, page 5.

III.

STATEMENT OF THE CASE

This is set forth in the Petition for Certiorari, pages 1-4.

IV.

ERRORS INTENDED TO BE URGED

1. The Michigan Supreme Court erred in holding that Section 34 of the Michigan Unemployment Compensation Act deprived the Chrysler Corporation of property without due process of law in violation of the due process clause of the Fourteenth Amendment to the United States Constitution.

2. The Michigan Supreme Court erred in holding that payment of unemployment compensation benefits by the State of Michigan from its Unemployment Compensation Fund deprived Chrysler Corporation of *property* within the meaning of the Fourteenth Amendment to the United States Constitution.

3. The Michigan Supreme Court erred in holding that due process under the Fourteenth Amendment to the United States Constitution requires that Chrysler Corporation be afforded a judicial review of the right of petitioners to unemployment compensation benefits and that the requirements of due process were not met by the administrative procedure.

V.

ARGUMENT

1. Due process of law does not require either a judicial determination or judicial review. The requirements of due process may be met by proceedings before administrative tribunals.

Section 34 of the Michigan Unemployment Compensation Act commonly known as the "double affirmation clause provides in part:

> "That if the final decision of a referee affirms the initial or an amended determination, or the appeal board affirms the final decision of a referee, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's experience record shall be charged with benefits so paid."

Notwithstanding that the Michigan Supreme Court reversed the findings of fact of the appeal board of the Michigan Unemployment Compensation Commission upon which the allowance of benefits to petitioners was based petitioners were entitled under Sec. 34 of the Act *(supra)* to be paid the benefits which had been allowed them by the redetermination of the Michigan Unemployment Compensation Commission on July 26, 1940 (R. 121) the Referee of the Michigan Unemployment Compensation Commission on October 7, 1940 (R. 140) and the Appeal Board of the Michigan Unemployment Compensation Commission on February 14, 1941 (R. 165-6)

Provision for payment of benefits to claimants upon double affirmation similar to that in the Michigan Unemployment Compensation Act was incorporated in the Unemployment Compensation Acts of thirty-six states. The

meaning and purpose of such provision is clear. It constitutes a direction to the Commission to pay benefits to an unemployed worker whose claim is allowed by the Commission and affirmed on appeal by the Referee, or whose claim is first allowed by the Referee and then affirmed on appeal by the Appeal Board. The purpose of this "double affirmation" provision is to provide an expeditious method of paying benefits to unemployed workers without the delays attendant upon extended appeals. *It is clear that the Legislature in adopting the "double affirmation" provision adopted the view that to delay payment until the appeal procedure had been exhausted, after two agencies set up by the act had successively allowed a claim, would permit of circumvention of the essential purpose of the act, i. e., to provide unemployment benefits at the approximate period of unemployment when the necessity of the worker was greatest.*

The only decision other than the case at bar yet rendered by a court of final resort on this subject is the case of *Abelleira v. District Court of California, et al.*, 109 Pac. (2d) 942, 17 Cal. (2d) 280. The California Supreme Court held valid the "double affirmation" clause in the California Unemployment Compensation Act. It discussed the purpose and construction of the "double affirmation" clause in the following language reported in 109 Pac. 2d. at page 952:

> "* * * this is one of the most significant statements in the Act. In substance it provides that when the initial determination has been reviewed and approved by the intermediate appellate authority (the Referee), no further delay in *payment* shall be permitted even though the issues may be still further considered in a subsequent appeal. It

was designed to carry out the policy declared in Section 1 of alleviating the evils of unemployment, as part of a national plan of social security in which federal and state legislation is coupled. Section 2. The very essence of the act is its provision for the prompt payment of benefits to those unemployed. See 88 Univ. Pa. L. Rev. 137, 139. Any substantial delay would defeat this purpose and would bring back the very evil sought to be avoided. *The legislature recognizing the importance on the one hand of avoiding improvident payments without due consideration of the right thereto, and the danger on the other hand of withholding the payments for long periods through the slow processes of appeal to the Commission and perhaps eventually to the courts, took a middle course.* It provided for a preliminary appeal or review of the first determination where payments were ordered. This appeal, ordinarily decided in a short period of time, carries with it a stay. But when this second decision has also been made in favor of the applicants, the benefits begin, with protection, as already noted, for the employer in the event of later reversal." (Italics ours.)

It was, of course, contemplated by the Michigan Legislature that by application of the "double affirmation" provision unemployed workers would in some cases receive benefits to which the Appeal Board or the courts might later determine they were not entitled. However, the Legislature undoubtedly weighed the occasional errors which might result from the improper payment against the injustice to all workers and the community which would result from delays in making payments, and after weighing these conflicting considerations, "concluded that it is wiser to have a system of unemployment compensation operating with a possible small percentage of error,

than to have a system not operating at all." (*Abelleira v. District Court of California, supra.)*

All of the requirements of "due process, such as notice, hearing before an impartial tribunal, opportunity to present witnesses, etc. were satisfied in the hearings before the Michigan Unemployment Compensation Commission, the Referee of the Michigan Unemployment Compensation Commission and the Appeal Board of the Michigan Unemployment Compensation Commission in the case at bar. Two thousand (2000) pages of testimony were taken. It has never been claimed by Chrysler Corporation nor did the Michigan Supreme Court hold that due process was denied Chrysler Corporation in any respect except that payment upon double affirmation would deprive Chrysler Corporation of the right to judicial review. We submit that due process of law may be afforded administratively as well as judicially; that judicial review is not an essential element of due process.

The case of *Weimer v. Bunbury,* 30 Mich. 201 cited by the Michigan Supreme Court in support of the proposition that judicial review is essential to due process holds exactly to the contrary. The opinion written by Justice Cooley is well summarized so far as it relates to due process in the fourth syllabus in the Michigan reports as follows:

> "*Due process of law: judicial process: administrative process.* Due process of law is not necessarily judicial process; much of the process by means of which the government is carried on, and the order of society maintained, is purely executive or administrative, which is as much due process of law as is judicial process."

In the case of *Reetz v. Michigan,* which was appealed from the Michigan Supreme Court to the United States

Supreme Court and reported in 188 U. S. 505, there was involved the constitutionality of a statute regulating the licensing and registration of physicians and the procedural requirements established under the statute. In discussing the question of "due process" the United States Supreme Court stated page 507:

> Page 507: "It is objected in the present case that the board of registration is given authority to exercise judicial powers without any appeal from its decision, inasmuch as it may refuse a certificate of registration. * * * Indeed, it not infrequently happens that a full discharge of their duties compels boards, or officers of a purely ministerial character, to consider and determine questions of a legal nature. *Due process is not necessarily judicial process.*"
>
> Page 508: "It follows that any legal proceedings enforced by public authority, whether sanctioned by age and custom, or newly devised in the discretion of the legislative power, in furtherance of the general public good, which regards and preserves these principles of liberty and justice, must be held to be due process of law.
>
> "*Neither is the right of appeal essential to due process of law.* In nearly every State are statutes giving, in criminal cases of a minor nature, a single trial, without any right of review. For nearly a century trials under the Federal practice for even the gravest offenses ended in the trial court, except in cases where two judges were present and certified a question of law to this court. In civil cases a common rule is that the amount in controversy limits the entire litigation to one court, yet there was never any serious question that in these cases due process of law was granted. * * *"

In the case of *Ohio v. Akron Park District,* 281 U. S. 74, the court had under consideration the constitutionality of an Ohio statute empowering the probate judge of any city in Ohio, on petition and after due notice and hearing, to establish a park district and to appoint a Board of Park Administrators for the Park District with power to acquire land, issue bonds and levy taxes. Chief Justice Hughes, in answering the objection that this statute violated the "due process" clause of the Fourteenth Amendment, stated:

> Page 80: "As to the due process clause of the 14th Amendment, it is sufficient to say that as frequently determined by this Court *the right of an appeal is not essential to due process, provided that due process has already been accorded in the tribunal of first instance.*"

In the case of *Stettler v. O'Hara,* 69 Or. 519, 139 Pac. 743, affirmed 243 U. S. 629, the court held valid a statute making final the finding of fact of an administrative commission in the following language reported in 139 Pac. at page 750:

> "Due process of law merely requires such tribunals as are proper to deal with the subject in hand. Reasonable notice and a fair opportunity to be heard before some tribunal before it decides the issues are the essentials of due process of law."

We quote briefly from several other cases, all of which held that the legislature may provide that hearing of administrative tribunals shall be final and conclusive without judicial review.

> *Nulter v. State Road Commission of West Virginia,* 119 W. V. 312, 193 S. E. 549.

(At page 551) "Due process of law may be afforded administratively as well as judicially. Lawful administrative process is due process equally as much as lawful judicial process."

Beck v. Missouri Valley Drainage Dist., 46 F. (2) 632, (Cert. denied 284 U. S. 618).

(At page 638) "* * * the right of appeal is not essential to due process of law. The right of review is statutory, and the Legislature may provide that a hearing before an administrative tribunal shall be final and conclusive. * * *"

Ross v. Board of Sup'r., 128 Iowa 427, 104 N. W. 506.

(At page 510) "The right to an appeal from one court or tribunal to another has never been held to be in itself a denial of due process of law. The power to make a final determination beyond which there is no appeal must rest somewhere, and in the absence of express or clearly implied constitutional limitations upon its authority in this respect the Legislature may confide that power in any given proceeding to any court, board or commission."

Whatever rights Chrysler Corporation may have in the Unemployment Compensation Fund of the State of Michigan the "double affirmation" clause could not deprive it of due process of law. The Michigan Legislature may constitutionally provide for payment of unemployment compensation benefits from the public funds of the state after such claims have been twice allowed by administrative agencies so that unemployed workers may obtain and receive the funds in their time of need thereby effectuating the public policy of such legislation.

Judicial proceedings or judicial review is not an essential element of due process within the meaning of the Fourteenth Amendment to the United States Constitution.

2. Payment of benefits to petitioners from the Michigan Unemployment Compensation Fund does not deprive Chrysler Corporation of PROPERTY within the meaning of the Fourteenth Amendment to the United States Constitution.

The Michigan Unemployment Compensation Fund is a fund held in the treasury of the United States to the credit of the State of Michigan (Section 26 of the Act). Chrysler Corporation has no proprietary interest therein. Chrysler Corporation has no such direct interest in the fund as to constitute property. Even if judicial review were essential to "due process," which we deny, it cannot be said that Chrysler Corporation is denied its property under Section 34 of the Act.

The Michigan Unemployment Compensation Fund is provided by taxation of employers subject to the Michigan Unemployment Compensation Act. The Act levys a tax on payrolls equal for all employers subject to the Act in the amount of 2% for the year 1937 and 3% thereafter until January 1, 1942 (Section 13). It further provides in Section 17 that an experience record should be kept of the contributions of each employer to the fund and of benefits paid which are charged to the experience record of such employer, and that commencing January 1, 1942, each employer's contribution or tax rate should be based upon his experience record in accordance with a table set forth therein.

Whatever may be the nature in law of the interest of the Chrysler Corporation in its experience record clearly it is not affected by the "double affirmation" clause. Section 34 of the Michigan Unemployment Compensation Act specifically provides:

> "* * * but if such decision is finally reversed, no employer's experience record shall be charged with benefits so paid."

If claimants in the case at bar are paid the benefits to which they are entitled under the "double affirmation" clause it will not be charged to Chrysler Corporation's experience record but will be paid out of the general State Unemployment Compensation Fund.

Even if the administrative procedure heretofore discussed were not "due process," all rights of Chrysler Corporation are fully protected by the right to appeal to the Circuit Court and to the Michigan Supreme Court.

The Act formerly provided for a further possible variation of one-tenth per cent (1/10%) in the tax rate to commence as of January 1, 1942. That is, if the general state experience record was less than 2% the tax rate would be decreased one-tenth per cent (1/10%); if it were more than two and one-half (2½%) it would be increased one-tenth per cent (1/10%). The possible effect that payment of benefits upon "double affirmation" might have upon the general state experience record and thereby upon the future tax rate of Chrysler Corporation was so remote, contingent and speculative, that it could not be held to be a property right.

This is most clearly demonstrated by the fact that Section 19 of the Act has been amended (Michigan Public Acts 1941, No. 364, pp. 651-679) and the provision that the state experience record should affect the tax rate has been repealed (p. 661). Since the provision was not scheduled originally to take effect until 1942, the state experience record has never affected the tax rate.

While we recognize that repeal or passage of subsequent legislation could not affect the validity of a statute

in force at a prior date, the repeal of this provision is a graphic illustration of our argument that the possible effect of payment by the state from public funds upon the subsequent tax rate of Chrysler Corporation is not a direct, vested, property interest. If the contention of Chrysler Corporation were sound every expenditure by the government from the public funds would constitute a deprivation of the property of every taxpayer.

The Michigan Supreme Court recognized in its opinion in the case at bar that the only right of Chrysler Corporation is that of an ordinary taxpayer. It stated, 301 Mich. page 356:

> "* * * That the Chrysler Corporation has a property right in the unemployment compensation fund and in its just administration was also passed upon by Mr. Justice Wiest's opinion in *Chrysler Corp. v. Smith, supra,* 453.
>
> "In respect of his right and duty to have only lawful use made of the unemployment fund, the assessed employer is in substantially the same position as the ordinary taxpayer relative to public moneys acquired by taxation being used for lawful purposes only."

We submit that the interest of a general taxpayer in the public funds of the state is not a property interest within the meaning of the Fourteenth Amendment to the United States Constitution.

The decisions of the courts recognize that for one to claim that his property is denied him without due process of law in violation of the Fourteenth Amendment to the United States Constitution, one must show a direct, substantial, present interest in that which he claims to be denied him.

In *Massachusetts v. Mellon,* 262 U. S. 447, a bill was filed to restrain the Secretary of the Treasury of the United States from making payments to the several states under the so-called Maternity Act. The purpose of the Act was to obtain the cooperation of the States to reduce maternal infant mortality and protect the health of mothers and infants. The Act created a bureau to administer the Act and to pass upon the payments to be made to the various States. The question was raised in the case whether the plaintiffs had such an interest as would permit them to file the bill. On this point the court stated on page 488:

> "We have no power *per se* to review and annul acts of Congress on the ground that they are unconstitutional. That question may be considered only when the justification for some direct injury suffered or threatened, presenting a justiciable issue, is made to rest upon such an act. Then the power exercised is that of ascertaining and declaring the law applicable to the controversy. * * * *The party who invokes the power must be able to show, not only that the statute is invalid, but that he has sustained or is immediately in danger of sustaining some direct injury as the result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally.*" (Italics ours.)

In the recent case of *Perkins v. Lukens Steel Co.,* 310 U. S. 113, it was held that the respondent steel companies had no standing to enjoin Federal officials from requiring as a condition for public contracts that minimum wages be paid in accordance with the administrative construction of the word "locality" in the Public Contracts Act. The court said on page 125:

> "We are of opinion that *no legal rights of respondent were shown to have been invaded or threatened*

> in the complaint upon which the injunction of the Court of Appeals was based. It is by now clear that *neither damage nor loss of income in consequence of the action of Government, which is not an invasion of recognized legal rights, is in itself a source of legal rights in the absence of constitutional legislation recognizing it as such* (citing *Tennessee Electric Power Co. v. Tennesseee Valley Authority,* 306 U. S. 118, 137-8; *Alabama Power Co. v. Ickes,* 302 U. S. 464; *Massachusetts v. Mellon,* 262 U. S. 447). It is not enough that the Secretary of Labor is charged with an erroneous interpretation of the term 'locality' as an element in her wage determination. Nor can respondents vindicate any general interest which the public may have in the construction of the Act by the Secretary and which must be left to the political process. *Respondents, to have standing in Court, must show an injury or threat to a particular right of their own, as distinguished from the public's interest in the administration of the law.* * * *" (Emphasis ours.)

An analogous situation arose in the case of *Crockett v. State Insurance Fund,* 170 App. Div. 122, 155 N. Y. Supp. 692, where an employer appealed to the courts from a decision of the Workmen's Compensation Commission awarding benefits to one of his employees. The court refused jurisdiction upon the ground that the employer, insured under the state fund, had no interest which entitled him to sue. In discussing this aspect of the case the court said page 693:

> "It is true that the employer has a remote interest, even though insured in the state fund, to the end that the risk which he claims not to be within the act may be so decided as affecting any subsequent premiums which he must pay. That interest, however, is too remote an interest to authorize his appeal in a matter where he is not otherwise aggrieved."

In the case of *Abelleira, et al. v. District Court of Appeal, et al.,* 109 Pac. (2d) 942, 17 Cal 2d. 280, the court in discussing the "double affirmation" clause of the Unemployment Compensation Act of the State of California similar to that in the Michigan Unemployment Compensation Act stated at page 951:

> "What injury do the employers show? They say that they will suffer in the event unauthorized payments are made to unemployed workers, because their accounts will be charged with such payments, and their reserve under section 39 of the act will be thereby decreased, with the ultimate result that they may in 1941 pay contributions at an increased rate. In examining this contention, we must remember just what the employers are trying to do. They are attempting to prevent payment of public funds in which they have no direct interest, by a body specially charged with the duty of making such payment. We held in the *Bodinson Mfg. Co.* case *(supra)* that they are aggrieved parties entitled to demand judicial review. But the question is not whether they are aggrieved to the extent necessary to gain standing on appeal or review. The question is whether the payment of benefits at this time constitutes such an immediate and irreparable injury as to warrant the drastic step of interfering with an uncompleted administrative proceeding, in defiance of an established rule of jurisdiction."

That only "direct interests" are protected by the due process clause of the Fourteenth Amendment to the United States Constitution also set forth in the following cases:

> *Norman v. Baltimore & Ohio Railroad Co.,* 294 U. S. 240.
>
> (Page 305) "That provision [due process] referred only to a direct appropriation." (Citing *Knox v. Lee,* 12 Wall 457).

Union Bridge Co. v. United States, 204 U. S. 364.

(Page 399) "Unless there be a taking, within the meaning of the Constitution, no obligation arises upon the United States to make compensation for the cost to be incurred in making such alterations."

Legal Tender Cases, 12 Wall. 457.

(Page 459) "Nor can it be truly asserted that Congress may not by its action indirectly impair the obligation of contracts. * * *"

To recapitulate: although Chrysler Corporation by the very terms of the Unemployment Compensation Act is a proper party to proceedings before the administrative tribunals and the Courts to contest claims for benefits within the scope and provisions of the Act, it cannot claim that payment of benefits after "double affirmation" in accordance with the law which directs payment after such "double affirmation" deprives it of property. The interest of the Chrysler Corporation in the Michigan Unemployment Compensation Fund is merely that of a general taxpayer. It is remote, contingent and speculative. It is not "property" within the meaning of the due process clause of the United States Constitution.

3. Conclusion

Petitioners' claims for benefits were allowed by the redetermination of the Michigan Unemployment Compensation Commission on July 26, 1940. They were affirmed by the Referee of the Michigan Unemployment Compensation Commission on October 7, 1940, and again affirmed by the Appeal Board of the Michigan Unemployment Compensation Commission on February 14, 1941. Petitioners thereby became entitled to unemployment compensation benefits in accordance with the provisions of Sec. 34 of the Michigan Unemployment Compensation Act.

The Michigan Supreme Court denied payment of such benefits on the ground that the "double affirmation" provision of the Michigan Unemployment Compensation Act violated the due process clause of the Fourteenth Amendment to the United States Constitution, depriving Chrysler Corporation of property without due process of law.

We submit that such provision did not deprive Chrysler Corporation of property without due process of law for two reasons:

1. The administrative procedure did constitute due process of law. Judicial review is not an essential element thereof.

2. Interest of Chrysler Corporation in the Michigan Unemployment Compensation Fund is not such a direct interest as to constitute "property" within the meaning of the Fourteenth Amendment to the United States Constitution.

We respectfully pray that the petition for Writ of Certiorari to the Supreme Court of the State of Michigan be granted.

Respectfully submitted,

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(10)

No. 203

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In the Supreme Court of the United States

OCTOBER TERM, 1942

CLAIMANTS FOR BENEFITS UNDER THE MICHIGAN UNEMPLOYMENT COMPENSATION ACT,
Petitioners,

vs.

CHRYSLER CORPORATION, a Delaware corporation,

and

THE APPEAL BOARD OF THE MICHIGAN UNEMPLOYMENT COMPENSATION COMMISSION, et al,
Respondents.

BRIEF OF RESPONDENT, CHRYSLER CORPORATION, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I.

STATEMENT OF THE CASE*

Petitioners are claimants under the Michigan Unemployment Compensation Act (Act No. 1, Michigan Public Acts of 1936 extra session, as amended by Act No. 347, Public Acts of 1937, and by Act No. 324, Public Acts of 1939; Mason's 1940 Cumulative Supplement to the Compiled Laws of Michigan 1929, Secs. 8485-41 to 8485-103), for

---

*The five-volume record in *Chrysler Corporation v. Smith*, 297 Mich. 438, by stipulation of the parties was made a part of the record in the cause below (Record pp. 7-8). These volumes have not been reprinted but the required number of copies have been filed with the clerk of

unemployment compensation benefits because of their unemployment at the plants of the respondent, Chrysler Corporation, during the period commencing with the week ending October 14, 1939, and terminating with the week ending December 2, 1939 (Record pp. 10, 55). Petitioners at that time were represented by the United Automotive Workers of America, affiliated with the Congress of Industrial Organizations (now United Automobile, Aircraft and Agricultural Implement Workers of America, affiliated with the Congress of Industrial Organizations), as collective bargaining agent, which was conducting a strike in the plants of the respondent (Record pp. 11, 55, 189). In the decision which the petitioners now seek to review, the Supreme Court of Michigan, construing Section 29 of the Michigan Unemployment Compensation Act, ruled that the petitioners were disqualified for benefits on the ground that their unemployment was due to a labor dispute which was actively in progress in the establishment in which they had last been employed, and that they were directly interested in the labor dispute which caused the stoppage of work. *Chrysler Corporation v. Unemployment Compensation Commission,* 301 Mich. 351, 360-4 (Record pp. 187-190).

In so deciding, the Supreme Court of Michigan followed its own decision in the earlier case of *Chrysler Corporation v. Smith,* 297 Mich. 438, in which certain other Chrysler employees, selected as representative or typical claimants, had sought benefits for unemployment resulting from the same strike (Record pp. 182, 190). In that case

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this Court. In this brief references to the part of the record consisting of these five volumes are by volume and page; references to the remainder of the record consisting of the volume of 180 pages also used in the Court below and of the proceedings and opinion in the Court below are by page only.

the Supreme Court of Michigan had determined that the claimants there were directly interested in the same labor dispute in the same establishment and, hence, were disqualified. During the course of the proceedings which resulted in this earlier decision of *Chrysler Corporation v. Smith,* 297 Mich. 438, the Circuit Court of Ingham County, Michigan, had made an order staying payment of unemployment benefits to all claimants, including the petitioners, "pending final determination by the courts" (Record Vol. I, pp. 56-7, 99-100). The claimants in that case had moved to vacate the stay (Record Vol I, pp. 81-7), and when the Circuit Court of Ingham County, Michigan, had denied the motion, they petitioned the Supreme Court of Michigan for a writ of mandamus to compel the Circuit Judge to vacate the stay. This writ the Supreme Court of Michigan denied, *Smith v. Ingham Circuit Judge,* 297 Mich. 478, stating that the issues raised in *Chrysler Corporation v. Smith,* 297 Mich. 438, had been decided.

The Supreme Court of Michigan thus, before the decision which petitioners now seek to review, had determined that claimants for benefits under the Michigan Unemployment Compensation Act for unemployment arising out of the UAW-CIO strike at Chrysler Corporation in 1939, who were directly interested in that labor dispute, were disqualified from receiving benefits under the court's construction of that act. That court also had determined that this Michigan statute did not authorize the administrative authorities to pay benefits to claimants whom the Supreme Court of Michigan had determined to be so disqualified. *Chrysler Corporation v. Smith,* 297 Mich. 438, 451-3; *Smith v. Ingham Circuit Judge,* 297 Mich. 478. Both of the preceding decisions of the Supreme Court of Michigan and its decision in the case below rest on the Court's construction of this Michigan statute. The Michigan Court

construed the statute to mean (1) that Chrysler employees who were represented by the UAW-CIO as collective bargaining agent, were directly interested in the labor dispute then existing between Chrysler Corporation and the UAW-CIO, out of which the unemployment arose, and, therefore, were disqualified under the statute from receiving benefits, and (2) that this state statute did not authorize payment of benefits to claimants who, under the Court's construction of the statute, were disqualified to receive benefits. *Chrysler Corporation v. Unemployment Compensation Commission,* 301 Mich. 351, 354, 358, 362-4 (Record pp. 182, 185, 188-190).

When the petitioners moved the Supreme Court of Michigan for a certificate and statement that they had asserted their rights to unemployment benefits by virtue of Section 34 of the Michigan Unemployment Compensation Act, and that the Supreme Court of Michigan had held that provision "to be invalid on the sole ground that it was violative to the due process clause of the Fourteenth Amendment to the Constitution of the United States," the Supreme Court denied that motion (Record pp. 192-4).

For the further information of this Court, respondent has set forth in the appendix a more detailed statement of the procedural background of the case below.

II.

SUMMARY OF THE ARGUMENT

(A) The decision of a Federal question was not necessary to the determination of the cause by the court below, and this judgment rests upon a non-Federal ground adequate to support it.

(B) The denial of unemployment compensation benefits to petitioners was based on the construction given by the court to the provisions of the Michigan Unemployment Compensation Act.

III.

ARGUMENT

(A) The decision of a Federal question was not necessary to the determination of the cause by the court below, and this judgment rests upon a non-Federal ground adequate to support it.

The decisions of this Court are clear that where judgment in the State court rests upon a non-Federal ground adequate to support it, this Court will not take jurisdiction. *Lynch v. New York ex rel. Pierson,* 293 U. S. 52, 54; *Honeyman v. Hanan,* 300 U. S. 14, 18, 302 U. S. 375, 378; *New York City v. Central Savings Bank,* 306 U. S. 661; *State of Washington v. Inland Empire Refineries, Inc.,* 311 U. S. 713; *Weber, President of the American Federation of Musicians v. Opera on Tour, Inc.,* 314 U. S. 615.

The construction by the State court of a State statute is a question of State law, does not present a Federal question, and is binding on this Court. *Quong Ham Wah Co. v. Industrial Accident Commission of California,* 255 U. S. 445; *Neblett v. Carpenter,* 305 U. S. 297, 302.

Section 29(d) of the Michigan Unemployment Compensation Act (Mason's 1940 Cumulative Supplement to the Compiled Laws of Michigan 1929, Sec. 8485-69), reads in part as follows:

> "Sec. 29. *Disqualification for benefits.* An individual shall be disqualified for benefits:
>
> * * *
>
> "(d) For any week with respect to which his total or partial unemployment is due to a labor dispute which is actively in progress in the establishment in which he is or was last employed: Provided, however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individual shall be deemed to be

directly involved in a labor dispute, unless it is established:

* * *

"(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, however, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection.

* * *"

The court below held that the petitioners are disqualified under this section of the Act. After discussing how the labor trouble arose from which the unemployment resulted it said (301 Mich. 351, at page 362; Record p. 189):

"* * * This, we think, brings appellants' case squarely within Section 29 of the Act (Comp. Laws Supp. 1940, Sec. 8485-69, Stat. Ann. 1940 Cum. Supp. Sec. 17.531) which defines the circumstances under which an employee is disqualified from receiving benefits under the act. * * *"

And at page 364 (Record p. 190) the court said:

"Because of the importance of decision herein we have given quite detailed consideration to the material claims of appellants rather than to have summarily disposed of this appeal by holding all controlling questions now presented were passed upon in *Chrysler Corp. v. Smith, supra,* adversely to appellants, as was held by the circuit judge and in part made the ground of his decision. The judgment entered in the circuit court is affirmed. * * *"

In the case of *Chrysler Corporation v. Smith,* 297 Mich. 438, thus adverted to, the Supreme Court of Michigan, referring to the disqualification of claimants under Section 29(d) of the Michigan Unemployment Compensation Act, arising out of the same strike, said at page 451:

> "We hold that the Dodge Main plant and the mentioned synchronized units constitute one 'establishment' within the meaning of that term as employed in the act, and claimants are disqualified from unemployment compensation by reason of the fact that their claims are based upon unemployment during a period in which a labor dispute, in which they were directly involved, was in active progress, and caused stoppage of operations in the establishment where they were employed."

The Supreme Court of Michigan in holding petitioners disqualified for benefits under this Michigan statute, proceeded strictly in accordance with Section 38 of that statute. (Mason's 1940 Cumulative Supplement to the Compiled Laws of Michigan 1929, Sec. 8485-78.) This relates to review by the courts of decisions of the Appeal Board of the Michigan Unemployment Compensation Commission. Section 38 reads as follows:

> "Sec. 38. *Review of questions of fact and law by court.* The findings of fact made by the appeal board acting within its powers, if supported by the great weight of the evidence, shall, in the absence of fraud, be conclusive, but the circuit court of the county in which the claimant resides or the circuit court for the county of Ingham shall have power to review questions of fact and law on the record made before the appeal board involved in any such final decision or determination but said court may reverse such decision of said appeal board upon a question of fact only if it finds that said decision of the appeal board is contrary to the great weight of the evidence: Provided, That application is made within 15 days after such determination by certiorari or by any other method permissible under the rules and practices of the circuit courts of this state, and to make such further orders in respect thereto as justice may require. The commission shall be deemed to be a party to any judicial action involving any such

> decision. An appeal may be had from the decision of said circuit court in the same manner as provided by the laws of this state with respect to appeals from circuit courts."

Petitioners in their brief do not question that the employer is an interested party and that he has a right to appeal to the courts. The Michigan Supreme Court in this case and also in the case of *Chrysler Corporation v. Smith,* 297 Mich. 438, construes Section 38 both in terms and by its method of proceeding under that section. In this case, that Court in considering an argument of petitioners that the facts in this case differ from those in *Chrysler Corporation v. Smith,* 297 Mich. 438, says (301 Mich. 351, at page 361; Record p. 188):

> "* * * we are of the opinion that the determination of the circuit court in this respect must be affirmed on the ground that the determination of the board of appeals was contrary to the great weight of evidence which discloses the true facts in this case. * * *"

After quoting the language of Section 38 in order to show the character and scope of review by the courts, the court goes on, on page 362 (Record p. 188), to say that:

> "The above-quoted finding of facts by the appeal board is not a full and fair statement of the facts as we find them conclusively disclosed by this record. * * *"

And it then proceeds to state what in its opinion is "the only fair conclusion which can be reached."

In *Chrysler Corporation v. Smith,* 297 Mich. 438, the court said at page 453:

> "Claimants question the right of the Chrysler Corporation to appear and contest their right to awards. This requires but short answer. As a contributor to the fund, having an interest in its proper disbursement, it was the right of the corporation, if

not its duty, to see that the purpose and full integrity of the fund was preserved."

In the decision below the Supreme Court of Michigan said (301 Mich. 351, at page 358; Record p. 185):

> "We are not in accord with appellants' contention, as stated in their brief, that following double affirmation: 'Subsequent appeals * * * under the act were *merely* for the purpose of determining whether the experience record of the Chrysler Corporation should be charged with payments so made.' The act does not expressly so provide, and it should not be so construed. Instead of the right of such appeals being granted solely or 'merely' for the purpose of enabling the Chrysler Corporation to have determination of whether its experience record should be charged with the payments made, we think this is but another reason for granting the right of subsequent appeals in addition to that of protecting the compensation fund provided by the Chrysler Corporation and others from maladministration or unlawful dissipation."

The proviso of Section 34 of the Michigan Unemployment Compensation Act (Mason's 1940 Cumulative Supplement to the Compiled Laws of Michigan 1929, Sec. 8485-74)* reads as follows:

> "* * * Provided, That if the final decision of a referee affirms the initial or an amended determination, or the appeal board affirms the final decision of a referee, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's experience record shall be charged with benefits so paid."

*This proviso is no longer contained in the Michigan Unemployment Compensation Act, having been eliminated on amendment of Section 34 by Act 364, Michigan Public Acts, 1941, effective June 19, 1941. (Mason's 1942 Supplement to the Compiled Laws of Michigan, 1929, Sec. 8485-74).

In *Chrysler Corporation v. Smith,* 297 Mich. 438, the Supreme Court of Michigan, after quoting the proviso, construed it as inapplicable, at page 453, as follows:

> "* * * The circuit judge held the provision inapplicable, and we join in such holding without spending time in an endeavor to note its place, if any, under other circumstances."

Since we have shown that the court below determined the facts in this case to be not different from those in *Chrysler Corporation v. Smith,* 297 Mich. 438, the proviso is equally inapplicable in this case.

The conclusion is clear that the judgment of the Michigan Supreme Court disqualifying the claimants to receive benefits and denying any payment to them does not rest on any Federal question. On the contrary no Federal question was necessary to the determination, and the judgment rests upon non-Federal grounds clearly adequate to support it. Jurisdiction to issue a writ of certiorari, therefore, is lacking. *Lynch v. New York ex rel. Pierson, supra.*

(B) The denial of unemployment compensation benefits to petitioners was based on the construction given by the court to the provisions of the Michigan Unemployment Compensation Act.

Petitioners' brief proceeds on the assumption that the Supreme Court of Michigan has construed the proviso of Section 34 of the Michigan Unemployment Compensation Act, above quoted, to give them a right to payment of benefits notwithstanding the court having held them to be disqualified. It assumes further that payment of benefits has been denied to them only because that court held this section "to be violative of the due process clause of the Fourteenth Amendment of the United States Consti-

tution." (Petition for Writ of Certiorari, Statement of Jurisdiction, p. 5.) The opinion of the Supreme Court of Michigan cannot be so interpreted. Its discussion of constitutional issues is confined to the invalidity of the proviso of Section 34 as "sought to be applied" by petitioners (301 Mich. 351, at page 355; Record p. 183), and the court's conclusion in this respect rests primarily on the provisions of the Michigan Constitution.

Discussing the invalidity of the proviso in Section 34, if construed to give petitioners a right to payment of benefits without regard to the court's decision that they were disqualified, the court refers to the right to due process "afforded by both the State Constitution and the Federal Constitution," and concludes (301 Mich. 351, at pages 356-7; Record p. 184):

> "Regardless of what useful and lawful purpose the double affirmation clause of section 34 of the unemployment compensation act might serve under other circumstances, as claimants wish to have it applied in the instant case it is unconstitutional in that if so applied it would deprive plaintiff of due process of law. What constitutes due process of law, when property rights are involved, is not a new question in this jurisdiction."

In support of this conclusion the court cites only *Hendershott v. Rogers,* 237 Mich. 338, 348, construing the Michigan Constitution.

The Supreme Court of Michigan further concludes that to adopt the petitioners' construction of the Michigan Unemployment Compensation Act would render the proviso of Section 34 invalid under the provisions of the Michigan Constitution relating to the powers of the judiciary, stating (301 Mich. 351, at pages 359-360; Record pp. 186-7):

> "Further, it may be noted that section 38 of the Michigan unemployment compensation statute

> (Comp. Laws Supp. 1940, Sec. 8485-78, Stat. Ann. 1940 Cum. Supp. Sec. 17.540) provides for a review of both questions of fact and of law by the circuit court, and 'An appeal may be had from the decision of said circuit court in the same manner as provided by the laws of this State with respect to appeals from circuit courts.' Article 7, Sec. 10, of the Constitution of this State (1908), in part provides: 'Circuit courts shall have * * * appellate jurisdiction from all inferior courts and tribunals and a supervisory control of the same.' To sustain appellants' contention as to the effect of the double affirmation clause of the act would be to deprive the courts of any effective review or supervisory control of awards of compensation to applicants therefor regardless of whether or not they were entitled to same under the terms of the act. So construed the double affirmation provision in the statute would be violative of the above-quoted constitutional provision."

Nowhere in this record does it appear that the decision by the court below of the Federal question to which petitioners refer was necessary for a determination of the cause or was actually made. The contention of petitioners to the contrary was expressly brought to the attention of the Supreme Court of Michigan in the motion of petitioners by which they sought to secure from that Court a certificate in the following form:

> "That this court held said provision to be invalid on the sole ground that it was violative to the due process clause of the Fourteenth Amendment to the Constitution of the United States" (Record p. 193).

The Supreme Court of Michigan denied this motion (Record p. 194). The record is, therefore, conclusive upon this point.

The Supreme Court of Michigan has settled the construction to be given to the Michigan Unemployment Com-

pensation Act. It first considered in the case of *Smith v. Ingham Circuit Judge,* 297 Mich. 478, and in the related case of *Chrysler Corporation v. Smith,* 297 Mich. 438, the contention of the petitioners, that where claims filed under the Michigan Unemployment Compensation Act have been allowed by two of the administrative tribunals, the provisions of Section 34 of the Michigan Unemployment Compensation Act should be construed to require the payment of such claims, notwithstanding a decision by a reviewing court that the claimants are disqualified. In *Smith v. Ingham Circuit Judge,* 297 Mich. 478, the court stated:

> "PER CURIAM. This is a petition for mandamus to compel Leland W. Carr, Ingham circuit judge, to vacate an order staying the payment of certain unemployment benefits by the Michigan unemployment compensation commission pending the determination of an appeal. The appeal in that case has been heard at the October session of court and the questions raised are decided in *Chrysler Corp. v. Smith,* ante, 438 (135 A. L. R. 900). The purpose in seeking mandamus is to obtain the payment of benefits pending decision on the above appeal, without regard to the ultimate decision as to the rights of the parties.
>
> "Writ denied. No costs awarded, this being a question of public interest."

The decision of the questions raised in *Smith v. Ingham Circuit Judge,* 297 Mich. 478, is set forth in the following language from the opinion of Mr. Justice Wiest in *Chrysler Corporation v. Smith,* 297 Mich., 438, 452-3:

> "Pending judicial determination of the rights of claimants, the circuit court stayed payments out of the fund and denied claimants' motion to vacate the order.
>
> "Claimants invoked that part of section 34 of the act, reading:

> " 'Provided, That if the final decision of a referee affirms the initial or an amended determination, or the appeal board affirms the final decision of a referee, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, no employer's experience record shall be charged with benefits so paid.'
>
> "This, if held applicable in the instance at bar, would render administrative action superior to recognized judicial power in the premises and constitute the provisions relative to appeal and court procedure a nullity. If construed, as applicable in this instance, it would render due process of law, expressly recognized and provided for in the act, nugatory and a senseless gesture. The circuit judge held the provision inapplicable, and we join in such holding without spending time in an endeavor to note its place, if any, under other circumstances."

Likewise, in the concurring opinion of Mr. Justice Boyles, in *Chrysler Corporation v. Smith,* 297 Mich. 438, 477, it is stated:

> "* * * It is argued by claimants that under section 34 of the act they are entitled to payment regardless of pending court proceedings, when applications for benefits have been 'twice affirmed', i.e., (1) by the referee, and (2) by the appeal board. The effect of such a construction would render payments a moot question pending court decision. Section 34 cannot be construed to deprive this court of jurisdiction to review questions of law and (within proper limits) questions of fact, especially where a construction of the meaning of the act is involved. Section 38 expressly provides for review by the courts."

The Supreme Court of Michigan accordingly determined in *Smith v. Ingham Circuit Judge,* 297 Mich. 478, and in *Chrysler Corporation v. Smith,* 297 Mich. 438, that the

proviso of Section 34 must be read in light of the provisions of Section 38, that this proviso is inapplicable in a case where the courts have determined that the petitioners are disqualified under Section 29(d), and that the courts have jurisdiction to stay payment of benefits pending a final determination, and to render an enforcible judgment controlling such payment without regard to the allowance of claims by the Referee and the Appeal Board of the Michigan Unemployment Compensation Commission. This construction of the Michigan Unemployment Compensation Act eliminated the questions under the State and Federal Constitutions which might have been presented in this case had the contention of the petitioners as to the effect of Section 34 been adopted.

On the appeal to the Supreme Court of Michigan in this case by the petitioners, they ignored its prior decisions and again urged a construction of Section 34 which would require the payment of benefits to them, although they were held to be disqualified. The court, in affirming the judgment of the Circuit Court, quotes with approval from the opinions in *Chrysler Corporation v. Smith*, 297 Mich. 438, and bases its adjudication of this issue on its construction of the provisions of the Act. This is evident from the following statement in its opinion (301 Mich. 351, 358; Record p. 185):

> "We are not in accord with appellants' contention, as stated in their brief, that following double affirmation: 'Subsequent appeals * * * under the act were *merely* for the purpose of determining whether the experience record of the Chrysler Corporation should be charged with payments so made.' The act does not expressly so provide, and it should not be so construed. Instead of the right of such appeals being granted solely or 'merely' for the purpose of enabling the Chrysler Corporation to have determination of whether its experience record

> should be charged with the payments made, we think this is but another reason for granting the right of subsequent appeals in addition to that of protecting the compensation fund provided by the Chrysler Corporation and others from maladministration or unlawful dissipation."

The construction given the relevant provisions of the Michigan Unemployment Compensation Act is the basis of the decision by the Supreme Court of Michigan that the proviso of Section 34 does not give the petitioners a right to the payment of benefits. This is a question of state law and is binding on this court. *Quong Ham Wah Co. v. Industrial Accident Commission of California, supra; Neblett v. Carpenter, supra.*

The argument of the petitioners in their brief as to the validity of the proviso of Section 34, if construed to give them a right to the payment of benefits without regard to their disqualification, is without foundation.

We submit that nothing in the Constitution of the United States or in any rule of constitutional law requires the State of Michigan, either directly or by applying the so-called "double affirmation clause" which the Supreme Court of Michigan has held to be inapplicable to this case, to pay out of its unemployment compensation fund unemployment compensation benefits to claimants whom the Supreme Court of Michigan has held to be disqualified for benefits.

It is respectfully submitted that the petition for writ of certiorari should be denied.

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Dated: August 12, 1942.

APPENDIX

STATEMENT OF THE PROCEDURAL BACKGROUND OF THE CASE BELOW

During the period commencing with the week ending October 14, 1939, and terminating with the week ending December 2, 1939, a labor dispute was actively in progress in the manufacturing establishment of the respondent Chrysler Corporation, resulting in the unemployment of the majority of its employees (Record pp. 10, 55, 188-9). Approximately 41,000 such employees, including the petitioners, filed claims for unemployment compensation benefits with the Michigan Unemployment Compensation Commission, pursuant to the provisions of the Michigan Unemployment Compensation Act (Act No. 1, Michigan Public Acts of 1936, extra session, as amended by Act No. 347, Public Acts of 1937 and by Act No. 324, Public Acts of 1939; Mason's 1940 Cumulative Supplement to the Compiled Laws of Michigan 1929, Secs. 8485-41 to 8485-103) (Record pp. 10-12, 55). On November 10, 1939, the Michigan Unemployment Compensation Commission issued its determination that all of such employees, including the petitioners, were disqualified for benefits by virtue of the provisions of Section 29(d) of the Michigan Unemployment Compensation Act (Record Vol. V, 2121-40).

This section reads in part as follows (Mason's 1940 Cumulative Supplement to the Compiled Laws of Michigan, 1929, Sec. 8485-69):

> "Sec. 29. *Disqualification for benefits.* An individual shall be disqualified for benefits:
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> "(d) For any week with respect to which his total or partial unemployment is due to a labor dispute which is actively in progress in the establishment in which he is or was last employed: Provided,

however, That no individual shall be disqualified under this section if he shall establish that he is not directly involved in such dispute. For the purpose of this section, no individual shall be deemed to be directly involved in a labor dispute, unless it is established:

* * *

"(2) That he is participating in or financing or directly interested in the labor dispute which caused the stoppage of work: Provided, however, That the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this subsection. * * *"

The petitioners and the great majority of the other employees, so disqualified, did not appeal from the determination of November 10, 1939, disqualifying them for benefits. Instead, due to the large number of claims, it was decided by the Michigan Unemployment Compensation Commission and by counsel for the employees that appeals from the determination of November 10, 1939, would be taken to the Referee of the Michigan Unemployment Compensation Commission by a selected group of employees (hereinafter referred to as the "representative claimants"), with a view to securing a decision which would govern all claims (Record pp. 12, 13, 55). After an extensive hearing before the Referee on the claims of the representative claimants, he issued his decision on February 21, 1940. This allowed the claims of certain of the representative claimants (which were in the same category as those of the petitioners) and affirmed the determination of the Commission in the disallowance of the remaining claims (Record, Vol. V, pp. 2272-2339). This allowance by the Referee of certain of the representative claims was affirmed on April 23, 1940, on appeal to the Appeal Board of the Michigan Unemployment Compensation Commission (Record, Vol. V, pp. 2352-2373).

The respondent, Chrysler Corporation, reviewed this decision of the Appeal Board in the Circuit Court of Ingham County, Michigan, pursuant to the provisions of Section 38 of the Michigan Unemployment Compensation Act (quoted on page 7 of this brief). That court filed its opinion on June 12, 1940, affirming the Appeal Board's decision allowing the claims of the representative claimants which were in the same category as those of the petitioners, and reversing the Appeal Board's decision in so far as it allowed certain other claims (Record, Vol. V, pp. 2394-2404). Appeals from the judgment of the Circuit Court, with reference to the claims of the representative claimants, were taken to the Michigan Supreme Court. The Michigan Supreme Court, on May 21, 1941, decided that all of the representative claimants, including those whose claims were in the same category as the claims of the petitioners, were disqualified for benefits under Section 29(d) of the Michigan Unemployment Compensation Act. *Chrysler Corporation v. Smith,* 297 Mich. 438.

On April 24, 1940, when the respondent Chrysler Corporation instituted the proceeding in the Circuit Court of Ingham County, Michigan, to review the decision of the Appeal Board on the claims of the representative claimants, an order staying proceedings and payment of unemployment benefits had been entered. By this order the Michigan Unemployment Compensation Commission, its Referee and the Appeal Board were stayed from the further prosecution of proceedings with reference to the claims of Chrysler Corporation employees (including the petitioners and other employees who were not included among the representative claimants) and from paying or authorizing the payment of unemployment compensation benefits to any of such employees in connection with claims filed by them during the period of the labor dispute, pending the disposition of the proceeding to review the deci-

sion of the Appeal Board (Record, Vol. I, pp. 56-7). A motion to vacate this order was filed on May 7, 1940, on behalf of the representative claimants whose claims had been allowed by the Appeal Board and by the Referee on the grounds, among others, that they were entitled to payment of benefits by virtue of the provisions of Section 34 of the Michigan Unemployment Compensation Act (quoted on page 9 of this brief) and that the Circuit Court had no jurisdiction to enter the order staying proceedings and payment of unemployment benefits (Record, Vol. I, pp. 81-7).

The Circuit Court denied the motion of the representative claimants but modified the stay order on May 24, 1940, so as to permit a redetermination by the Commission of the claims of employees, such as the petitioners, not included among the representative claimants. The order denying the motion provided specifically that payment of benefits to claimants was stayed "pending final determination by the courts" (Record, Vol. I, pp. 99-100).

The opinion of the Circuit Court on the motion to set aside the stay order (Record, Vol. I, pp. 2379-2394), fully considered the contentions of the representative claimants as to their alleged right to immediate payment of benefits under the proviso of Section 34 of the Michigan Unemployment Compensation Act. The Circuit Court concluded that the Act must be construed as recognizing the authority of the courts under the Michigan Constitution to review proceedings of administrative tribunals, and that the court had jurisdiction "to issue the writ of supersedeas, or stay order, to the end that a judicial review might be had, effectively, of the administrative order from which the appeal has been taken" (Record, Vol. V, pp. 2389-90). This decision of the Circuit Court was reviewed by the Michigan Supreme Court on a petition for a writ of mandamus to compel the Circuit Judge to vacate the order staying payment of unemployment benefits. The writ was

denied on May 21, 1941. *Smith v. Ingham Circuit Judge,* 297 Mich. 478.

In May, 1940, immediately following the modification of the stay order by the Circuit Court the claims of the petitioners had been redetermined and allowed by the Michigan Unemployment Compensation Commission (Record pp. 109, 121-4). This allowance of the claims of the petitioners was affirmed on appeal by the Referee on October 7, 1940 (Record pp. 126-142) and by the Appeal Board on February 14, 1941 (Record pp. 154-167). When the decisions of the Michigan Supreme Court, in *Chrysler Corporation v. Smith,* 297 Mich. 438, and *Smith v. Ingham Circuit Judge,* 297 Mich. 478, were issued on May 21, 1941, a proceeding was pending in the Circuit Court of Ingham County, Michigan to review the decision of the Appeal Board affirming the redetermination and allowance of the claims of the petitioners (Record p. 9). The Circuit Court thereafter rendered its decision (Record pp. 175-8) that the petitioners were disqualified for unemployment compensation benefits for the period of the labor dispute by the provisions of Section 29(d) of the Michigan Unemployment Compensation Act as construed by the Michigan Supreme Court in *Chrysler Corporation v. Smith,* 297 Mich. 438. The judgment entered by the Circuit Court on October 8, 1941 set aside the redeterminations of the claims of the petitioners, the decisions of the Referee and of the Appeal Board and any orders incorporated therein for the payment of benefits to the petitioners; denied the claims of the petitioners for unemployment compensation benefits for the period of the labor dispute; and directed the Michigan Unemployment Compensation Commission to make appropriate entries upon its records denying the claims of the petitioners in accordance with the provisions of the judgment (Record pp. 178-180).

The petitioners appealed from this judgment to the Michigan Supreme Court, seeking a reconsideration of their disqualification for benefits, notwithstanding the fact that the record was in substance the same as that before the Supreme Court on the prior appeal.* The petitioners also claimed that, regardless of the decision of the Circuit Court or of the Supreme Court as to their disqualification for benefits, they were entitled to payment under Section 34 of the Michigan Unemployment Compensation Act, despite the contrary construction given this section in the case of *Smith v. Ingham Circuit Judge,* 297 Mich. 478, and *Chrysler Corporation v. Smith,* 297 Mich. 438 (Record pp. 2-6). The Michigan Supreme Court affirmed the judgment of the Circuit Court denying the claims of the petitioners in *Chrysler Corporation v. Unemployment Compensation Commission,* 301 Mich. 351. Its decision in this latter case, which the petitioners seek to review in this Court, was that the petitioners were disqualified for benefits under Section 29(d) of the Michigan Unemployment Compensation Act, and that the Michigan Unemployment Compensation Act did not authorize the payment of benefits to the petitioners who were so disqualified (Opinion of the court in the cause below, Record pp. 182-190).

The petitioners filed a motion in the Michigan Supreme Court for the entry of a certificate and statement of that court, to which was attached a proposed certificate containing the following language (Record pp. 192-3):

> "Now, therefore, it is hereby certified and stated that in the above entitled cause claimants and appellants did assert their claim to unemployment compensation benefits by virtue of Section 34 of the

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* The record in *Chrysler Corporation v. Smith,* 297 Mich. 438, was by stipulation made a part of the record in the cause below (Record, pp. 7, 8).

> Michigan Unemployment Compensation Act (Act No. 1 of the Public Acts of 1936 extra session, as amended by Act No. 347 of the Public Acts of 1937, and by Act No. 324 of the Public Acts of 1939). That this court held said provision to be invalid on the sole ground that it was violative to the due process clause of the Fourteenth Amendment to the Constitution of the United States."

This motion by the petitioners was denied by the Michigan Supreme Court (Record p. 194).